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# Wake Forest Jurist

# WAKE FOREST JURIST

Vol. 6, No. 1 Fall, 1975

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## STATEMENT OF PURPOSE AND POLICY

The *Wake Forest Jurist* is published twice yearly by the Wake Forest School of Law of Wake Forest University. Its main purpose is to inform the friends and alumni of the Law School about activities and events of interest at the Law School, of recent important decisions by the courts of North Carolina and other jurisdictions, and news of the achievements and activities of fellow alumni. In this way the *Jurist* seeks to provide a service and a meaningful link between the School of Law and its alumni. Also, the magazine shall provide an outlet for the creative talents of students and an opportunity for legal writing by them. Opinions expressed and positions advocated herein are those of the authors and do not represent official policy of the School of Law.

# A MESSAGE FROM THE DEAN

Law Homecoming on October 18, along with the Partners Banquet on October 17, was an unqualified success, at least if one discounts the score of the football game with Maryland. It was splendid to see so many of our graduates at the pre-game reception and barbecue. A special word of thanks is in order to C. D. Clark of Roanoke Rapids and Don Brock of Trenton for their yeoman work in overseeing preparations for the "pig pickin". The result of their dawn-til-dusk labors was some of the best genuine Eastern North Carolina barbecue ever tasted west of Raleigh. We hope to bring C. D., Don, and their capable crew back for next year's Homecoming. If popular demand is the determining factor, you can rest assured they will be on hand!

Alumni participation in the current campaign for the Law Fund has been excellent thus far. As of this writing (October 21) the Fund has received over $46,000 toward the goal of $60,000 in annual gifts for Law School operating expenses. Thus, we are over three-quarters of the way home with over two months to go in the campaign, which was kicked off in September and will continue through December 31. I wish to express my thanks to our hard-working class chairmen (too numerous to list here) and to all of you who have made contributions. Also, I wish to express my gratitude to Law Alumni President Everett Henry, Law Fund Chairman Larry Sitton, Forsyth County Chairman William K. Davis, and all of the members of the Steering Committee for their outstanding leadership in the campaign. Their enthusiasm has been contagious, and it is a genuine pleasure to work with them in our mutual quest for adequate funding for the Law School.

The importance of the Law Fund to the future of our School would be difficult to overstate. The Law School is financially self-sustaining in that it pays all its expenses (including utilities, building maintenance, and overhead) and receives no monies from the University. Nor does it receive any state or federal aid. The entire Law School budget, which this year exceeds $1,000,000, comes from three sources: (1) tuition and fees paid by law students; (2) income earned on Law School endowment; and (3) the Law Fund. Tuition income will account for over 90 per cent of this year's budget; endowment income and the Law Fund will account for the rest. Clearly, the School is overly dependent on tuition income. It is of extreme importance that the other two sources become more productive. To that end, I earnestly solicit the continuing support of every alumnus.

Pasco Bowman

# THE EDITOR'S PAGE

The *Wake Forest Jurist* has become a respected publication within the Law School and the alumni community. This is the result of many hard hours of work over the past few years by a small group of students. Although lacking any appreciable journalistic experience, in comparison with our predecessors, the editors of the *Jurist* hope to continue to improve the format of this publication.

Without intending to reject tradition, we have made a few changes with this issue. Most noticeably, the *Jurist* has taken on a new "face". Of course, an old familiar face adorns our cover — the beloved "Nig", Professor Robert E. Lee, as sculptured by Nancy Steadman, a past student at the Law School, and photographed by Bill Boney, our Graphics Editor. Of less notice is a new typeface and what we hope to be a general overall improvement in the technical appearance of the *Jurist*.

As the Law School continues to grow, the amount of news, to which much of this issue is devoted, steadily increases. With this issue, the tenth since the inception of the *Jurist* in the spring of 1971, we welcome another new addition to the faculty, Dr. Edwin Vieira, Jr.. An Acquisitions and Reference Librarian, Mr. Kenneth A. Zick, has also joined the Law School. Mr. Zick has compiled an informative article on the expansion of library services which I hope all will take time to read. Another relatively recent addition to the School of Law is The Wake Forest Institute for Labor Policy Analysis. Although established in 1974, WILPA has not, prior to this issue, received any significant exposure in the *Jurist*. Following tradition, the *Jurist* continues to report the current news of the various student organizations, themselves growing in numbers.

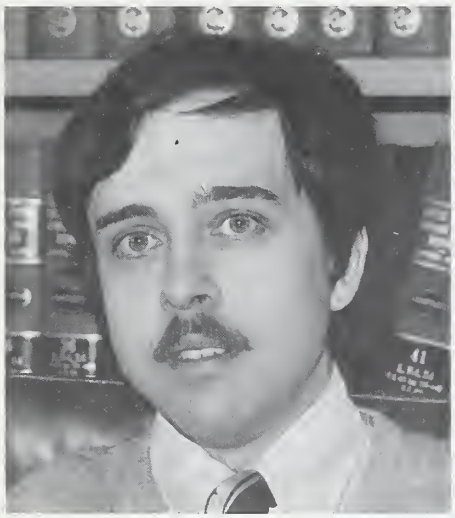
As always, the Legal Articles section of this issue includes several interesting and well written articles. The *Jurist* continues to provide an opportunity for students to have published short commentaries on various legal developments. **However, with this issue the JURIST announces a new policy which we hope will be well received by the alumni. Beginning with the Spring issue of the JURIST, legal articles may be submitted by alumni to the Board of Editors for consideration for publication.** The *Jurist,* therefore, encourages alumni of the School of Law who wish to have published short commentaries on current developments within the law and the legal profession to contact its Legal Articles Editor for further details. The Board of Editors hopes that this opportunity to provide the practitioner with a somewhat informal forum will be well accepted by the Law School alumni and, thereby, be of benefit to all, while insuring the continuing progress of the magazine itself.

The *Jurist* has, on occasion, taken the opportunity to report on various alumni who have, through their distinguished careers, reflected honor on the School of Law. In this issue, we are proud to present such an article on Brigadier General Emory M. Sneeden, a graduate of the Class of 1953. General Sneeden graciously submitted to an in depth interview with our Alumni Editor, Dewey Edwards, in which he provides our readers with an insight to a legal career in the Army.

Finally, I would like to extend my sincere appreciation to the various editors and staff members of the *Jurist,* who have unselfishly devoted their valuable time to this issue. Additionally, a word of thanks goes out to the personnel of the Law School who have been of invaluable aid to us in the compilation of material for this issue. I hope that our readers will find this issue of the *Jurist* to be both informative and enjoyable.

Norman D. Kohl, Jr.

# LAW SCHOOL NEWS



## Dr. Edwin Vieira, Jr.

*Manes M. Merrit*

As of the beginning of this year, the Wake Forest University School of Law is proud to have as a member of its faculty, Dr. Edwin Vieira, Jr.

Dr. Vieira is presently teaching Labor Relations I and next semester will conduct a seminar of his own construction on Constitutional Law and History. Throughout the school year, he will be integrally involved in the National Moot Court Team as its advisor and will also serve as a member of the Library Committee.

Dr. Vieira was born in Fall River, Mass. and grew up in Providence, Rhode Island. He attended undergraduate school at Harvard College receiving his A.B. in Chemistry in 1964. He received his J.D. from Harvard University School of Law and is a member of the Maryland and Washington, D.C. Bars. Prior to obtaining his J.D., Dr. Vieira attended the Harvard University Graduate School of Arts and Sciences and received his A.M. and Ph.D. in Chemistry.

After receiving his Ph.D., Dr. Vieira was employed by the Navy to work at the Naval Ordnance Laboratory, located outside Washington, D.C.. While working there, he was involved in nuclear and space research and technology. After graduating from Law School in 1973, Dr. Vieira worked for the National Right to Work Legal Defense Foundation as staff attorney. He presently works for the Foundation as a consultant. During the summer of 1975, Dr. Vieira joined Dr. Petro at the Wake Forest University Institute of Labor Policy Analysis as its Research Director.

At the present time, Dr. Vieira is working on a law review article to be published this spring. The article will attempt to incorporate Constitutional Law, economic theory and the historical development of American Labor Relations Law.

As to the reason why Dr. Vieira decided to join the faculty at Wake Forest, Dr. Vieira replied, "Sylvester Petro asked me to. It's as simple as that."

## Kenneth A. Zick Acquisitions and Reference Librarian

*Terry Miller*

The constantly increasing demands upon the Wake Forest Law School Library have

made Mr. Kenneth A. Zick a valuable addition to the library staff. Mr. Zick is responsible for acquisitions for the library and reference services provided by the library.

As to the first of these functions, Mr. Zick sees the necessity for an orderly and comprehensive development of reference materials. After conducting studies to determine areas in which deficiencies exist, he is confined in his selection policies by limited funds. Consequently, he frequently consults with faculty members, particularly when large purchases are involved. He is presently concerned, in particular, with building up the library's international law materials. Also, he is involved in the process of establishing a formal interlibrary loan program with the law schools at UNC and Duke.

Reference services must be provided to effectively handle questions encountered by students, faculty members, and practicing attorneys, and to educate them as to the materials available in the various areas of the law. In addition to providing assistance as to the reference materials themselves, Mr. Zick is also available to discuss the legal theories involved in particular problems, and possible approaches to the research to be done. Because of his active participation in dealing with problems faced by practicing attorneys, he feels it would be wise to obtain his license here, to eliminate any possible question of practicing law without a license.

An alumnus of Albion College in Albion, Michigan, Mr. Zick graduated from the Wayne State School of Law in 1974, after attending graduate school in political science at the University of Michigan, and being involved in the Ph.D. program there briefly. After law school, he attended the University of Michigan Library School until August of this year. He participated in advanced legal bibliography courses there, at the third largest legal reference facility in the country.

Mr. Zick anticipates that his work as a reference librarian will give him a considerable opportunity to work with ideas and keep up with changes in the law. He has already found himself faced with a great variety of legal problems. Within the school itself, he has become involved as a judge for the second-year Practice Court program and is providing assistance in the preparation of briefs.

## Professor Sizemore Honored

*Jeffrey Davis*

In addition to being a recognized expert in the fields of evidence, civil procedure, and medical jurisprudence, Professor James Sizemore, a member of the law faculty since 1953, has gained much renown of late in a somewhat unrelated area: dobro-playing.

Although he began as a guitar player at the tender age of nine in his hometown of Erwin, Tennessee, where he and a few other local youths played at square dances and school shows, Sizemore didn't take up the guitar-like dobro until some seven years ago. Since then, he has become one of the world's top dobro players, having won the world championship at the fiddlers' convention at Union Grove in 1972 and 1973. Though he placed "only" third at this year's convention, he is "still the best dobro player among U.S. law professors . . . and probably the only one, as well".

In addition to the recognition he received at Union Grove, the professor was also guest of honor recently at the Granite Quarry Civitan Fiddlers' Convention and, along with the other members of a band that had never previously played together, captured first-place honors at a recent bluegrass festival in Pinnacle. At the latter event, his band beat out several groups that perform and record on a professional, full-time basis.

After his discharge from the Navy following World War II, Sizemore declined a tempting invitation to join The Lonesome Pine Boys, a band led by Joe "Speedy" Clark, then eastern Tennessee's most popular country and western performer. Instead, he went on to college, receiving his B.S. from East Tennessee State College, his L.L.B. from Wake Forest, and his L.L.M. from New York University. He was also a member of the three-man Drafting Committee for the North Carolina Rules of Civil Procedure, is a member of the Committee of the Conference of Superior Court Judges for the Drafting of Standard Jury Instructions, and was recently a commentator on a panel which presented a mock trail on the new Federal Rules of Evidence for the North Carolina Bar Association Institute.

## London Seminar on International Business Transactions

*Dayle McAnally*

Although the final details are yet to be worked out, plans are in the offing for the Wake Forest School of Law to organize and sponsor a clinical seminar in International Business Transactions in London, England, during June 1976. In general, the course will consist of three weeks of classes — one two hour morning and one two hour afternoon session each day. A paper is also required. Although the precise content of the course will vary to some degree, depending upon the persons the law school is able to get as lecturers, the seminar will cover the following topics: trade regulations and unfair competition, licensing, trademarks and patents, contracts, company law, product liability, labor law, currency regulation, and taxation.

It is interesting to note that one of Professor Oleck's former students, Pieter J. Hoets, is presently Vice-President and General Counsel for Coca-Cola Europe, and he has graciously agreed to help the law school organize the program. Other lecturers will be, like Mr. Hoets, general counsel for multinational corporations, or distinguished barristers and solicitors representing clients in international business transactions. Professor Bond will administer the course.

Home base for the seminar probably will be a London hotel near the University of London and its Institute for Advanced Legal Studies. Regular summer school tuition will be charged, and the seminar is limited to twelve to fifteen students. Each student will pay his own expenses. The seminar will, of course, be open to qualified students from other law schools.

# ALUMNI HOMECOMING WEEKEND

## First Year Students: A Statistical Survey

*Dale Glendening*

The School of Law has registered 159 first year students selected from 1185 applicants. The number of students who have enrolled tops last year's figure of 144 students thus making the "Class of '78" the largest in the history of the School of Law.

In keeping with the tradition of being a North Carolina Law School, 75% of the registrants are classified as North Carolinians. Although a wide cross-section of colleges and universities are represented in the class, the majority of the students completed their undergraduate work at North Carolina schools. These schools sent respectively: the University of North Carolina-Chapel Hill, 38; Wake Forest University, 31; Davidson, 11; North Carolina State, 8; and Duke, 7. Out-of-state schools sending the largest number include Washington & Lee, 3, and University of Virginia and VPI, 2 each.

The class of '78 also contains the largest number of women for any class in the history of the School of Law. There are 29 women, bringing the total number enrolled to 74. There are 4 minority students in the class.

The academic credentials of the class are as impressive as its size. The average cumulative grade point average is 3.0, and the average score on the Law School Admission Test is 599. It is apparent from these statistics that an increase in the quantity of students has not affected the high standards of admission set by the school.

## 1975 Law Day

*Suzanne Greenwood*

Law Day has been observed for twenty-three years at Wake Forest; in 1958, Law Day U.S.A. was first proclaimed. Its objectives are to foster a deeper respect for the law, encourage responsible citizenship, and promote national strength and unity. On the evening of April 5, 1975, third year law students began the traditional Wake Forest celebration of Law Day with a cocktail party given in their honor by Dean Pasco M. Bowman. They joined the other students and guests at Benton Convention Center in downtown Winston-Salem for the Law Day Banquet and Program.

Presiding at the Law Day program was the 1974-75 chairman of the Student Bar Association, Henry A. Harkey. Mr. Harkey recognized the 1975-76 officers and the retiring officers of various student organizations. The 1975-76 chairwoman of the Student Bar Association, DiAnne C. Sellars, presented

the Alumni Award for Outstanding Service to the Honorable David Maxwell Britt, Judge of the North Carolina Court of Appeals. This award is based on excellence within the nominee's career, service to the Wake Forest School of Law, service to community and state, and high character.

Guest speaker Judge Walter E. Hoffman stressed the use of computers as a research tool by lawyers and the courts. From his experience as the Executive Director of the Federal Judicial Center in Washington, D.C. and as Senior Judge of the United States District Court for the Eastern District of Virginia, Judge Hoffman predicted the increasing utilization of computers as surrogate clerks. Following Judge Hoffman's speech, students (and a few faculty) danced to the music of the Excalibur.

## Phi Delta Phi News

*Paul Lewis, Historian*

Ruffin Inn of Phi Delta Phi is looking forward to another outstanding year. The new officers for 1975-76 are Irvin Sink, Magister; Ralph Hill and Aaron Clinard, Vice-Magisters; Terry Hutchins, Exchequer; John Nobles, Clerk; and Paul Lewis, Historian. Our membership rolls include some 80 students. We are proud of the fact that the Phis can be counted among the leaders in School Government, the *Wake Forest Law Review,* and Moot Court organizations.

Now that the law school has become inundated with the "Yankee element," it has become increasingly important to structure the Fraternity so as to best serve the needs of a large, diverse group of individuals. Continuation of our traditional superlative turnout during Rush should insure that Ruffin Inn stays in the black regarding finances and our spirit of camaraderie.

We miss the counsel of our advisor, Professor George Walker. At present Professor Walker is on a sabbatical at Yale University for the academic year, working on his Doctorate. The chapter wishes him all the best luck in his endeavors and looks forward to his return next year to the law school.

Praise goes out to a number of Phis for extra-curricular efforts this past year. Brothers George Daniels, Tom Greene, and Dick Ramsey have led the Wake Forest Rugby Team to a fine season. Mr. Daniels, Captain and founder of the team, is largely responsible for the team's winning record. These Brothers are to be commended for their herculean attempt to go to law school and keep in training for this grueling sport.

It should also be noted that Brothers John Nobles, Fred Poisson, and Jim Dorsett returned from a fruitful summer protecting the streets of Virginia Beach. They were selected from a large number of applicants to be trained as policemen and patrol the city as regular police officers. These Brothers spent three months in standard training sessions and independent activities as crime fighters.

Our regards to the alumni. If any of you desire information concerning our activities, please write to us in care of the law school. We encourage our grads to return to Wake Forest. It will give you a chance to have a good time while, simultaneously, allowing the Brotherhood some insights into life "in the profession." Social events for this year will include rush parties on football weekends, a Dinner at the Schlitz "Brown Bottle Room," a Halloween party, and the usual series of Friday afternoon Smokers.

## Phi Alpha Delta Report

*Janice L. Scott, Clerk*

Timberlake Chapter held its annual Spring Awards Banquet on April 9 at the "Brown Bottle Room" at the Joseph Schlitz Brewing Company. Awards were presented to Judge Naomi E. Morris of the N.C. Court of Appeals as honorary initiate and to Sam Evans as the Brother of the Year. Judge

Morris gave a short speech on the N.C. Court of Appeals and answered questions from the members and guests present. She remarked that she was particularly pleased to accept the award as honorary initiate of P.A.D. because when she was a law student at Carolina women were excluded from all law fraternities. Seventeen new associates also were pledged during the banquet.

Three of the officers, George Kaneklides, Walt Etringer and Janice Scott, attended the North Carolina Conclave for District XVIII which was held in Raleigh on April 18 and 19. District Justice Allan McClain led the informal meeting and presented Timberlake Chapter with the awards for the Most Outstanding Chapter in the district and for co-winner of the Most Outstanding Chapter in the country.

To honor this chapter for these awards, September 23, 1975 was declared "Phi Alpha Delta Day" in North Carolina by Governor James E. Holshouser who is also a P.A.D. The state proclamation was written up for the P.A.D. national magazine, "The Reporter." September 23 was also the date for the initiation of nineteen new members including those who pledged in the spring.

This year's rush was begun early with a mid-summer beer blast which was well attended by the accelerated students who entered law school in January and were here for summer school. Rush continued throughout August and September with another beer blast, a cookout, a party with a band and several informal evenings of socializing with the new first-year students. As a result of the members' hard work and sincere efforts to present P.A.D. to rushees, Timberlake Chapter was pleased to accept over fifty first- and second-year students as pledges.

The first of this year's professional programs was a smoker on September 17, 1975 at which W. L. Kautsky, Assistant Director of the N.C. Division of Prisons, spoke on the N.C. Correctional system. The police ride program, the high school speakers program and other professional programs are also being continued this year as a means of integrating law school and the legal profession.

Timberlake Chapter welcomes its large group of new members and pledges and looks forward to another active year of social and professional events. Some interest in the chapter has been expressed by local alumni so all alumni in the area will be given the chance to become involved in Timberlake Chapter activities. Inquiries and assistance from P.A.D. alumni are invited.

## BALSA

*Melvyn Brown*

The Black American Law Student Association's (affectionately known to some of us as BALSA) chapter at Wake Forest University School of Law is in its third year of existence at the law school. The organization has undergone its share of change, as has any neophyte group in its natural evolutionary process.

What started as a group of four, has now swollen to a group of six: an all-time high membership for this chapter. The members of the BALSA chapter for this year are as follows: Melvyn Brown, chairperson; Andrew Yarborough; vice-chairperson; David

Martin, secretary; Deanna Easterling, treasurer; Michael Grace and Lee Evans. For the first two years of the operation of the group, the organization was chaired by women. Now, for the first time in the group's institutional history, this position is being held by a man. For the first time ever, the Student Bar Association voted funds for BALSA use during the 1975-76 school year.

The group plans to affiliate itself with the national BALSA organization. This will give the chapter here at the law school access to the "pulse" of the other participants in the national organization, *via* regional and national workshops and conventions and the quarterly magazine published by BALSA.

Two primary purposes of BALSA are to: (1) aid its members in identifying and solving problems that they have in common; and (2) to further and encourage the entrance of blacks into the legal profession. Toward both ends, the chapter at the law school plans to have a minority law student/practitioner symposium here at the school sometime in the spring.

## Women in Law

*Susan Morrice*

In its second year as a law school organization, Women in Law is pursuing various activities to further a number of long range goals. As members, we hope to inform ourselves and others of the legal conditions peculiar to women of all classes in our society. We also plan to explore our own role as law students and as potential attorneys in alleviating the more inequitable situations. Both men and women are encouraged to join WIL and to attend any speaker's program which they think might be of interest to them.

A Career Conference, held October 25, was geared towards two other aims of WIL — recruitment of women into law school and less directly towards placement of women in legal careers. Undergraduate women in North Carolina and Virginia as well as students from several law schools were invited to attend a day of seminars with North Carolina attorneys. Speakers included: Beirne Minor Harding, a Winston-Salem at-

torney and recent Wake Forest Law School graduate, and Howard Twiggs, a prominent Raleigh attorney known for his work in the area of mental health and as the official ERA lobbyist in the spring of 1975. Speakers for a seminar on Government Attorneys were: Capt. Hagen, of the JAG Corps; Ann Reid, from the Attorney General's Office; and Karen Stamm, Greensboro's District Attorney.

Efforts to attract undergraduate women to Wake Forest Law School have been made by Susan Montaquila and Ann McKown on behalf of the Speaker's Committee. On October 2, Ms. Montaquila set up a question and answer session in New Dorm for Wake Forest women interested in attending law school. Ms. McKown has organized a number of trips to women's colleges which will hopefully result in a larger number of female applications next year. The recruitment program is aimed primarily at women's colleges. Dean Herring will visit coed schools with the intention of interesting students of both sexes in Wake Forest Law School.

Aside from the Recruitment Committee, there is a Speaker's Committee headed by Linda Bridgman, a Community Projects Committee with Judy Lambeth in charge, and a Placement Committee under Vickie Cheek. At this time the Curriculum Committee chairperson has not been selected, but tentative plans have been made to hold a Minority Rights class once a week in the evenings. Officers for 1975-76 are second year Vice President, Ann McKown; third year Vice President, Susan Montaquila; and President, Susan Morrice. Our faculty sponsor is Dean Buddy Herring.

## Student Bar Council Report

*DiAnne Sellers, Student Bar Association Chairwoman*

Significant changes continue to occur in the structure and activity of the student government. This year the Student Bar Council is composed of four officers elected from the entire Student Bar Association, fifteen representatives elected on a class basis, and two legal fraternity representatives. This change from electing officers from within the Council was made pursuant to the procedure set forth in the Amendment to the Constitution passed last spring. Because of the increased size of the Council, the variety of views held by the student body can better be expressed.

In response to important student needs, several projects have been undertaken. An Honor Committee under the leadership of

the Vice Chairman of the Council is preparing for submission to the student body a proposed written honor code and student judiciary procedure for its consideration.

Also, Committees on the Library and the Curriculum are working along with faculty committees in these areas to provide a means to directly register complaints and suggestions. An Open Forum is being held on a regular basis where Dean Bowman and Assistant Dean Herring are available for student questions in regard to the direction of the Law School and administrative matters. In an attempt to provide the faculty with a source of valid and constructive student comments, a student evaluation of the faculty will take place at the end of the semester. A new Committee on Public Relations was established this year which has as its purpose the improvement of relations between students and faculty. A number of informal dinners and talks on non-academic matters are planned.

The foremost emphasis of the Council this year is placed on presenting informative professional speakers programs. A two-day Hiring Seminar already has been held at which local attorneys and businessmen explained the nature and qualifications for their respective positions and offered suggestions for interviewing. Plans for other fall programs include a Malpractice Seminar, a program for reviewing the new North Carolina Pre-Trial Criminal Procedure Act, and a program conducted by the FBI illustrating electronic surveillance techniques. Interest groups within the Law School are also working with the Student Bar Council to meet the need for professional programs. From among the Women in Law, International Law, Environmental Law Societies and B.A.L.S.A., a Career Conference, a Minority Recruitment Program, and noted speakers in their fields are scheduled.

The Student Bar Council activities are motivated by a desire to provide the students with a professional environment. To help achieve this end, the Council welcomes suggestions from the alumni because the purpose of the Student Bar Council is to serve the student — present and past.

## The Moot Court Board

*David R. Tanis, Chief Justice*

The Moot Court Board is going into its fourth year with the benefit of the experience and hindsight of three years of its predecessors, and the amenities provided by a refurbished office.

Continuing its rapid growth and expansion since its formation in the Spring of 1972, the Board undertook the conduct of its Fall programs with an enthusiasm and *esprit de corps* which ought to provide the momentum for an extremely successful year. Pursuant to an internal reorganization, committee chairmen began to undertake the conduct of their programs with a fervor which caused an observer to remark that he had not seen the Moot Court Board act with such professionalism and high morale previously.

Practice Court II, under the chairmanship of Elva Jess, is the appellate advocacy program in which second and third year students prepare briefs from the records of actual cases on appeal. The students then argue their causes before a panel of appellate judges comprised of Board members, professors, and members of the local bar. The participation of the local bar is actively sought, and the response so far has been heartening. The closer affiliation of the Bar with the students helps to bridge the often criticized gap between the actual practice of law and the academic milieu. Ms. Jess' competency is reflected in the smoothness of the current Practice Court II operations.

The Legal Bibliography program, in which First Year students also prepare a brief and make an appellate argument, is being conducted this fall, but on a small scale. The accelerated class, which entered in January, 1975 has completed the other requirements for the Legal Bibliography course, and the students are now preparing

briefs and in October will argue before a panel of judges, including Professors Rose and Bond, the course instructors. Each first year student has a Moot Court Board member advising him in the preparation of his brief and oral argument. The experience in operating this program this fall will doubtless be extremely beneficial to Chairman Paul Lewis as he organizes and conducts the Spring Legal Bib arguments for some 160 first year students.

Among the most harried and hard-working members of the Law School are the six participants in the National Moot Court Competition. There will be two three-man teams participating in the regional competition with Pete Sarda, Vic Lefkowitz, and Joe Stroud on one team, and Bill Walker, Rich Manger, and Tom Barefoot on the other. Each team is struggling to complete its brief by the October 11th deadline and prepare their argument for the Regional Competition which is to be held here in Winston-Salem, October 30-November 1. The Forsyth County Bar is sponsoring this competition under the direction of Chester Davis.

The spring will see the International Law Moot Court Competition which will be characterized by the esoteric nuances of that discipline, and the Judge Edwin M. Stanley Competition, the intramural appellate advocacy competition, the finals of which will be judged on April 3, 1976 by Senator Robert Morgan. The first place winner will receive a $250 award and the runner-up will receive $100.

Special plaudits are in order for Professor George K. Walker, who is currently on leave of absence at Yale University, for his considerable achievements in initiating and developing the present Moot Court program at Wake Forest. Not only did he give the Board an immeasurable amount of guidance and advice, but through his efforts, selected students were given the opportunity to participate in the preparation of briefs in cases before the Court of Military Review and to make oral arguments as well as prepare briefs before the United States Fourth Circuit Court of Appeals. Professor Walker has generously assigned his income from these sources to the school and Moot Court Board, from which it was possible to provide the Moot Court office with new carpets, drapes, tape recorders and an electric typewriter.

Increasing emphasis on the development

of the trial and appellate skills of oral advocacy and brief formulation is especially appropriate in light of the often proffered criticism of the effectiveness of law schools in producing and developing skilled and effective court room lawyers. The participation and advice of local attorneys toward this end will help to continue the development of the Moot Court Board to the ultimate benefit of all concerned.

## International Law Society

*John Collins, Chairman*

This year the Society will take a more positive role in presenting activities to benefit the entire Law School community than it has in the past. We have implemented a speakers program to span a variety of topics concerning International Law. Through our efforts we hope to demonstrate that the study of International Law is no longer an abstract concept based on futility but rather an important and valuable legal tool in a world of expanding client activity and diminishing international remoteness.

The inaugural program featured Associate Professor James E. Bond, of the Wake Forest University School of Law, speaking on the Law of War. The program was well attended and enthusiastically received due to the peculiar chemistry of a good speaker, good students, and good times. Our second program, scheduled for the end of October, will feature a representative of the Wachovia Bank and Trust Company speaking on the problems of International Banking. In future months we hope to present representatives of the U.S. Department of State and attorneys from the Virginia-Carolinas area speaking on their special field of expertise in the international arena. In connection with the speakers program a film series is being planned. All programs are open to the students, faculty, and friends of the Wake Forest University School of Law. We cordially invite your participation.

For the fourth consecutive year the Wake Forest University School of Law will be represented in the annual Jessup Cup International Moot Court Competition. This year's problem involves the right to use an international agreement on the enforcement of judgments to enforce a domestic judgment against a nonparty nation which has nationalized production facilities of a party nation and has shipped goods to a second party nation. The regional and national finals of the competition will be held in the spring.

## Environmental Law Society

*Thomas M. Doerk, Chairman*

The Environmental Law Society was organized last spring with its primary purposes being to provide interested law students non-legal information on the environment relating to biological, ecological, political, and economic issues as well as to provide information on how environmental issues are treated within the legal process. Last spring, Dr. Miles Bidwell of the Wake Forest Economics Department spoke on "Economic Externalities" and made a lucid presentation of the basic economic problems. This fall, an environmental law professor is scheduled to speak on environmental litigation and especially on the National Environmental Policy Act. Also planned is a "talk and walk" with Dr. Ralph Amen of the Wake Forest Biology Department, and there will be a classroom discussion and tour of the Silas Creek Watershed.

The Society welcomes all students and alumni to its functions.

# A Look Forward at Expanded Library Services

*Ken Zick*

Perhaps, not since Thomas Jefferson hauled most of his law library from Monticello to Washington after the War of 1812 to rebuild the collection now referred to as the Library of Congress, has such an expansion of library services taken place as has occurred at the Wake Forest Law Library in the past two years.

Well, maybe the comparison is exaggerated a little. After all, Jefferson only donated 200 plus books. But old Tom and the Law School have shared the common belief that in order for the law to grow, libraries and their services must grow with it. And considering the growth in law that has occurred within the last fifteen years, this has not been an easy task.

Nevertheless, under the direction of Mrs. Vivian Wilson with the advice and assistance of Dean Bowman and the faculty, the library has expanded its collection and services enormously. In the past two years, the library has met and surpassed ABA-AALS standards regarding law school library resources. Indeed, resources have even been added in many cases.

Within those two years, the library has exceeded the 60,000 volume requirement and is well on its way toward the 64,000 mark. Although still well below the 150,000 volume mark of the University of North Carolina or the 185,000 volume collection of Duke University, in 1973 Wake added 6,544 volumes to its collection as compared to 4,481 at Duke and 4,783 at Carolina. But these cold statistics conceal the extensive nature of the selection process during this period — a process which involved considerable staff and faculty discussion, appraisal, and consultation.

Still, a library is neither merely a collection of books or a place to go for solitude and study. It takes a competent and highly trained staff to keep library effectiveness at its peak. As a distinguished law professor once put it, "Even to catalog a book for a law library, as distinguished from a general library, one must know that a tort is not a dessert and that discovery has nothing whatever to do with the North Pole."

Thus, within the last three years, the library has not only been completely classified

using the Los Angeles County Bar Library Classification System which required the addition of a full-time cataloger, but this fall a circulation librarian, Mrs. Mary Day and an Acquisitions and Reference Librarian, Mr. Ken Zick were added. Ms. Laura Sale continues her fine job of precisely cataloging the collection to fit the changing needs of the legal profession.

By relieving Mrs. Wilson, who up until 1971 had done it all, from an insuperable workload, the expansion of library services hopefully will insure continuity and a well-rounded stability in collection development.

Of particular noteworthiness is the new concentration on providing reference services. Students, faculty, and practitioners can now consult with a reference librarian when they need advice concerning library resources, new developments in the collection, or the formulation of a different search strategy in researching a particular problem. Since the new librarian possesses both a law degree and a masters in library science, the library hopes that such expertise will be used frequently in the future by students and practitioners alike.

Although the library staff and faculty library committee are pleased with these expanded services, they agree that some very critical problems lie ahead. Space for materials is dwindling, costs of periodicals and law books are soaring, and rapid changes in federal and state law have meant that revisions and supplements must be purchased at increased cost even more frequently than in the past. Coupled with the fact that ABA-AALS standards may rise in the near future, this means that the "heart" of the law school will have to beat harder in order to keep circulation up.

These problems must be met, however, and the library staff is working on such interim and long-range plans as an exchange program for periodicals, a formal interlibrary loan procedure, the reshuffling and weeding of certain materials, and the consideration of microform equipment. Of course, contributions are still appreciatively needed to help alleviate these problems in the long run.

The right book at the right time with the right advice or knowledge is still the stock and trade of a good attorney. The aim of the library has always been to try to help accomplish this goal. How to use that knowledge is the function of a law school education. Professor William Roalfe, a Law Librarian Emeritus at Northwestern University, tells the story of a night watchman at the law library who, after a number of years service, could no longer resist giving his appraisal of the book collection. Frustrated and disgusted one night, he blurted out, "What a library! I have looked at every book in here, and I can't find a single one that tells me how to build a boat". The right book at the right time also takes the right person who knows how to use it and perhaps even the right library to give it. Wake hopes it can satisfy at least the legal needs of the legal community which it endeavors to serve, even if it doesn't have a single book in its library on how to build a boat.

# The Wake Forest Institute for Labor Policy Analysis

*Manes M. Merrit*

*At this time the author would like to thank Dr. Edwin Vieira for his kind assistance for making this article possible.*

Wake Forest Institute for Labor Policy Analysis, WILPA, was established at Wake Forest University School of Law in 1974, under the auspices of Professor Sylvester Petro and Dean Pasco M. Bowman. WILPA's primary function is to analyze the origins, applications and effects of the National Labor Relations Act as it has been amended. It is designed to explore National Labor Policy; primarily the policy that is embodied in the National Labor Relations Act and to some extent, the labor policy as it appears in the labor relations laws of several states. Hence, the Institute is designed to promote sound scholarship and rational debate concerning a large and broad spectrum of important issues in the field of labor relations law.

Presently, the staff of the Institute consists of Professor Sylvester Petro, Director, and Dr. Edwin Vieira, Research Director. Professor Petro, as the Institute's Director, is primarily responsible for the long term strategy of the Institute, in that he determines which of the major issues that the Institute should be involved with and how the Institute should proceed in solving these issues. As its Research Director, Dr. Vieira is responsible for editing, correlating and making sure that everything runs smoothly over the next five to seven years. Besides these two men, the Institute has on its staff consulting scholars from all over America. Their primary function is to decide whether or not the syllabus that has been drawn up by Professor Petro and Dr. Vieira presents the correct problems to be researched. If the correct problems have been chosen, then these consulting scholars will either proceed to do the research that is necessary to solve these problems or else tell the Institute how the problems can be solved and suggest who is best suited to solve the problems. It is these men who will develop the material of the Institute, since they are experts in their respective fields.

As to its labor policy commitment, WILPA takes no sides. It does have one single objective, and that is to analyze the effects of the labor policy upon the general interests which unite all Americans, the interest of the consumer and his personal welfare. Otherwise, WILPA is uncommitted. It takes no sides in union-management disputes. The Institute is trying to be as objective and analytical as possible. "We have no axes to grind for anybody in particular." Hence, the Institute is not a consulting firm. It is not WILPA's function to help either unions or management to deal with a particular arbitration problem. The major contribution that the Institute will make for unions and management is that the Institute will try to clarify the real policy considerations underneath the labor laws of America.

Politically, Wake Forest Institute for Labor Policy Analysis has no affiliation. The Institute's research facilities are generally available to everyone. The total effect of the

Institute will be oriented to one single goal: "... regard for the consumer interests and the individual rights which constitute the foundations of the free society as it is known in the United States." Hence, WILPA intends to look at the National Labor Policy of the United States, both from the historical prospective, as well as from what has actually happened in comparison to what was predicted to happen.

The intention of the Institute, then, is to explore the possible relationships between inflation, unemployment, and the nation's currently prevailing labor laws, policies, ideas and practices. It is the purpose of the Institute to eventually be able to do a systematic study of the National Labor Policy and to enable society, as a whole, to be able to ask the right questions and to be able to get the right answers.

In order to achieve the results that WILPA was designed to obtain, the Institute has broken its activities into two broad fields:

(1) Surveillance and Reporting
(2) Analysis, Evaluation, and Policy Formulation.

Under the first category, the Institute hopes to be able to follow labor law trends in the courts and in the administrative agencies. Particularly interesting and important developments in either the law itself or the practice of labor relations will be reported, with the only limiting factors being the means and interests of the public.

Within the second category, developments of the courts and the administrative agencies are evaluated for consistency with the policies of Congress. In turn, the policies of the Congress will be tested for its compatibility with the values of a free and highly productive society. Eventually, symposia will be conducted, airing labor-policy issues, to which representatives of all points of view will be invited to discuss their opinions on these topics.

The future for WILPA is bright. The program that is being set up will take approximately five to ten years to develop. Hopefully, the results will be used by all persons and organizations, both private as well as governmental, interested in the clarification and the improvement of the labor policies of the United States. It is hoped that sometime in the near future, a journal, Labor Policy Analysis, devoted to periodical review of labor-policy problems and issues will be published.

# LEGAL ARTICLES

## The New Criminal Procedure Act

General Statutes Section 15A-273

As of September 1, 1975, under Article 14 in Chapter 15A, sec. 273 of the new Criminal Procedure Act, solicitors are provided with an important investigative technique never before available in North Carolina. Solicitors may not obtain an order requiring a person to appear and submit to certain tests when: (1) the judge is convinced that there is probable cause to believe that a crime has been committed that is punishable by more than one year imprisonment; (2) reasonable grounds exist under which a particular person is suspected of committing the crime; and (3) the results of certain nontestimonial identification procedures will materially aid in determining the guilt of the party. These tests involve nontestimonial identification described in sec. 15A-271 as "identification by fingerprints, palm prints, footprints, measurements, blood specimen, urine specimens, saliva samples, hair samples or other reasonable physical examination, handwriting exemplars, voice samples, photographs, and lineups or similar identification procedures requiring the presence of the subject."

The question raised here is whether or not N.C.G.S. 15A-273 sets out a process by which a seizure takes place on less than probable cause as required by the Fourth and Fourteenth Amendments.

The Supreme Court of the United States in *Davis v. Mississippi* ruled that the Fourth and Fourteenth Amendments were violated by a dragnet detention of young black men for the purpose of obtaining their fingerprints.[1] The issue of unlawful detention was the vital area of judicial concern, but in anticipation of a constitutional question of fingerprint detention, the court said:

> Detentions for the sole purpose of obtaining fingerprints are no less subject to the constraints of the Fourth Amendment. It is arguable however, that because of the unique nature of the fingerprinting process, such detentions might, under narrowly defined circumstances, be found to comply with the Fourth Amendment even though there is no probable cause in the traditional sense.[2]

This dicta statement in *Davis* paved the way for more recent Supreme Court decisions in which seizures on less than probable cause under particular circumstances were held not to raise the protection of the Fourth Amendment. In *United States V. Mara,*[3] and *United States v. Dioniso,*[4] the Court provided for the production of handwriting samples and voice exemplars under order of a grand jury. The Court's reasoning expanded the argument set forth in the *Davis* dicta statement and relied on the *Katz v. United States* guideline as to what rights are not protected under the Fourth Amendment. The Court making specific reference to *Katz* commented that "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection."[6] The Court in *Dionisio* construed this definition to include physical characteristics such as an individual's voice tone, handwriting, and facial characteristics.[7]

In an earlier case, the Supreme Court addresses the question of whether or not a blood extraction is a sufficient bodily intrusion to raise the probable cause protection of the Fourth Amendment.[8] In that case the Court held that a warrant to take blood was not necessary in that the particular situation was an emergency under which evidence might have been destroyed had officials not acted promptly. Mr. Justice Douglas dissented, stating that forcible bloodletting was a clear violation of the

Fourth Amendment right of individuals to be secure in their person.

These recent Supreme Court decisions suggest that the nontestimonial identification procedures allowed on less than probable cause as set out in sec. 15A-273 may not violate the Fourth Amendment rights to protection against an unreasonable seizure. These decisions are limited to their own narrowly defined set of circumstances, but form a substantial basis of authority supporting the constitutionality of N.C.G.S. 15A-273. It is likely that the *Katz* argument regarding public exposure of physical characteristics will be of increasing significance in future determinations of permissable nontestimonial identification procedures.

North Carolina courts have not heard any cases under the new statute. However, in *North Carolina v. Sharpe*[9] the seizure of hair samples without a warrant while the suspect was in custody was discussed in terms of *Katz* and *Dionisio*. Justice Moore asserted that while the seizure might conceivably be protected under the Fourth Amendment, this individual case was not violative of the Fourth Amendment.

As the new statute is effectuated in North Carolina, it is hoped that the utmost discretion will be used in applying the investigatory techniques now allowed. That no prosecutorial abuse is wielded is of the highest importance. North Carolina solicitors and judges will have to look both to their interest in promoting more efficient detective work and to the safeguarding of individual rights.

Nancy G. Barnhill

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N.C. Gen. Stat. § 15A-273 (1975).

General Statutes Section 15A-256

## Detention and Search of Persons Present in Private Premises or Vehicle to Be Searched

The scope of the powers given to police officers pursuant to a search warrant has been increased significantly by this statute, which became effective September 1, 1975. The statute represents a compromise between the government's interest in effective law enforcement and the individual's right to privacy.

The search of persons present in a place which is the object of a search warrant is essential to law enforcement to prevent the frustration of the search by the transfer of items seizable under *Warden v. Hayden,* 387 U.S. 294 (1967), and N.C.G.S. 15A-242, and which are named with particularity in the warrant, to persons present on the premises. Such a search undoubtedly infringes upon the individual's reasonable expectation of privacy, the right protected by the Fourth Amendment, as first enunciated in *Katz v. United States,* 389 U.S. 347 (1967). However, three limitations on this intrusion by the government appear to make it constitutionally viable.

Before such a search can be made, the police officers must have made an unsuccessful search of the premises and persons named in the warrant. At this point, the probable cause which justified the warrant may be said to exist with respect to these persons, because of the particular circumstances surrounding their presence there. Also, the search of these individuals could be considered to be within the reasonable scope of the search authorized by the warrant. This reasonableness of the scope of a search is a necessary implication of the Fourth Amendment, as stated in *Warden,* supra, *Chimel v. California,* 395 U.S. 752 (1969), and related cases.

The police have this authority to search persons not named in the warrant only when private premises or vehicles are searched. This requirement recognizes the unreasonableness of subjecting everyone in a public place or vehicle to a personal search. In a nonpublic place, particularly such as a friend's residence, there is a probability that those present had a greater inclination and opportunity to conceal upon their person the items named in the warrant. Under the circumstances described by the statute, persons concealing items seizable under the warrant take the risk of prosecution, and justifiably so.

Any evidence found upon a person subjected to such a search may not be seized or used as evidence unless it is the same type of property as that named in the warrant. This prevents the search from being a general search of the person and is consistent with the particularity requirement of the Fourth Amendment, whose purpose, as set out in *Stanford v. Texas,* 379 U.S. 476 (1964), is to insure that the items to be taken are not left to the discretion of the officers. As in the case of the previously discussed limitations, the probable cause supporting the warrant also presents the likelihood that the specified items may be concealed on the persons present.

This last restriction on a search made pursuant to this statute puts a restriction on the items which may be seized, which is not constitutionally required by the Supreme Court. In *Abel v. United States,* 362 U.S. 217, 238 (1960), it is said, "When an item subject to lawful seizure properly comes into an officer's possession in the course of a lawful

search it would be entirely without reason to say that he must return it because it was not one of the things it was his business to look for." The degree of intrusion upon privacy under the statute appears to be sufficient to justify this restriction upon the government.

In effect, this restriction may not be as great as it seems from the wording. Although any property not of the type named in the warrant may not be used as evidence to prosecute, if property is in fact seized by the police, it is extremely unlikely that its possessor will initiate any type of legal action to obtain the return of the property, or indeed, that such an action could be brought. Thus, part of the police officer's purpose of finding seizable items can be effectuated.

Georgia and Illinois each has a statute similar to 15A-256. Each statute allows police officers executing a search warrant to detain and search any persons present, "to prevent the disposal or concealment of any instruments, articles or things particularly described in the warrant. The Georgia statute, GA. CODE ANN., title 27, section 309 (1966), was judicially approved in *Rockholt v. State,* 129 Ga. App. 99, 198 S.E.2d 885 (1973). The Illinois law, SMITH-HURD ILL. STATUTES, ch. 38, section 108-9 (1964), was upheld in *People v. Pugh,* 69 Ill. App.2d 312, 217 N.E.2d 557 (1966). Neither of these statutes contains any of the restrictions on the government imposed by 15A-256. These decisions, therefore, provide very persuasive authority for the constitutionality of the North Carolina statute.

Terry Miller

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## Drunk Driving in North Carolina Under The New General Statutes Section 20-138

Editor's Note: *The following comment is supplemental to the Drunk Driving article which appeared in the Spring 1975 issue of the* JURIST. *This further research is in response to questions raised by alumni who had read the earlier comment on the constitutionality of North Carolina's recently enacted drunk driving statutes.*

*As Legal Editor of the* JURIST, *I would like to thank those who have acknowledged our writings and further encourage additional requests, which as evidenced by the present issue, will be given every consideration.*

North Carolina recently enacted drunk driving laws setting an absolute standard for determining intoxication.[1] Under the new provisions it is unlawful to operate a vehicle on a public highway while having a blood alcohol percentage of 0.10 per cent or more.[2] Violation of this statute results in

automatic revocation of driver's license.[3] The stringency of the new law has naturally raised some interesting questions as to its validity and application.

Having a blood alcohol content of more than 0.10 per cent is not the same offense as being "under the influence". Rather, it is denominated by statute as a lesser included offense of such.[4] To prove that a person is driving under the influence, the state must show that the defendant has drunk a sufficient quantity of intoxicating beverages to cause him to lose the normal control of his bodily or mental faculties to such an extent that there is an appreciable impairment of either or both of these faculties.[5] For the lesser included offense, however, the State need only prove (usually done by Breathalyzer reading) that the defendant's blood alcohol content was greater than 0.10 per cent. The latter charge is obviously easier to prove. In spite of the difference in the two offenses, the punishment provided by statute is the same for each — automatic revocation of license with a fine of from $100 to $500 or imprisonment of from 30 days to six months.[6] The fact that the same punishment is provided for both driving under the influence and its lesser included offense of driving with a blood alcohol content of 0.10 per cent or more provides a basis for questioning the constitutionality of the statute.

No North Carolina cases have been found on this point. An interesting argument, though, is suggested by some cases from other jurisdictions. Several courts have held that the constitutional protection against double jeopardy prevents a defendant who has pleaded guilty to plain drunk or another lesser included offense from being later sentenced for driving under the influence. Though this argument has not yet reached many appellate courts, it seems viable and reasonable. Since the North Carolina statute prescribes the same punishment for both offenses, a conviction for one is in essence a conviction for both. When a defendant is sentenced for "blowing a 0.10", the same result is obtained as if he were convicted of the "greater" offense of driving under the influence, which some authority indicates is placing the defendant twice in jeopardy. Again, it is noted that this argument has not been tested in North Carolina and would perhaps be summarily dismissed. It remains, however, a possible alternative.

A related question is whether the "Chart of Approximate Blood Alcohol %", published by the North Carolina Department of Motor Vehicles, is admissible as evidence in drunk driving cases. The North Carolina Supreme Court was faced with a similar question in *Hughes v. Vestal*.[8] There the defendants in a civil action sought to introduce a chart entitled, "Stopping Distance from Different Speeds with Good Brakes", which was also published by the Department of Motor Vehicles. Rejecting the chart as incompetent, the Court said that such charts are pure hearsay. It concluded that too many variables are involved in stopping distances for any "formula, . . . based on speculative averages, to be of sufficient accuracy and relevancy to rise of its own force to the force of dignity in an actual set of circumstances".[9] It seems that predicting the blood alcohol content of a particular individual after a certain number of drinks would be at least as complicated. The factors contributing to intoxication vary greatly in individuals. Consequently, it is reasonable to assume that North Carolina would follow a similar rule of exclusion for the chart of blood alcohol content.

Though there has been no North Carolina case on either of the above questions, both are issues which should be considered in defending drunk driving cases. With conscientious consideration of all such alternatives, the new law will hopefully be made more understandable and enforceable.

Don Bridges

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9. *Id*, at 505.

## The Malpractice Dilemma

*Adapted from the American Society of Law and Medicine 1974 Annual Oration delivered by Cyril H. Wecht, M.D., J.D., and his article, "The Interfaces of Law and Medicine," American Journal of Law and Medicine, p. 89, Vol. 1, No. 1, March 1975.*

Of the nation's pressing medicolegal problems, the medical malpractice crisis is probably the most substantial, continuing hindrance to constructive medicolegal activities and to endeavors to improve interprofessional relationships. It may well be the foremost issue on the medicolegal scene today. The malpractice crisis is producing much hostility, resentment, and anxiety between the medical and legal professions. Unfortunately, there is no simple answer.

Should malpractice litigation be done away with? Absolutely not. It is necessary in many respects. Arbitration panels have now been adopted in New York State, following the successful use of such a panel in one judicial district of New York City. Such alternatives as screening panels and "no-fault" schemes should also be explored. Presently, we have the AMA's Medical Liability Commission and the National Foundation for Health Sciences Liability, two national groups which have emerged from recommendations contained in the final report of the Secretary of Health, Education, and Welfare's Commission on Medical Malpractice. Unfortunately, these groups have thus far been unable to resolve the key issues. Nevertheless, because in certain areas the problem has reached crisis proportions, we must explore every reasonable effort to cope with it.

Two malpractice cases with broad legal significance have recently been decided on the West Coast. The first, *Helling v. Carey*,[1] involved a 38 year-old woman in the State of Washington who, at the age of 29, was fitted for contact lenses by her ophthalmologists in 1959. Some problems developed with the contact lenses which forced her to come back in 1963, again in 1967, and several more times in 1967, 1968, and 1969. In 1968, for the first time, they tested her with a tonometer and found that she had primary open angle glaucoma. By that time she had already lost much of her peripheral vision and some of her central vision. She went on to develop a full-blown case of glaucoma with serious compromise of her vision. Subsequently, she sued the ophthalmologist for

malpractice. However, all the experts, both for her and for the defendents, agreed that ophthalmologists do not routinely test tonometrically for glaucoma in people under forty.

Consequently, judgment was rendered for the defendant physicians. The Appellate Court affirmed, and the case went up to the Washington State Supreme Court. The Supreme Court reversed, holding that even though statistically only one person out of 25,000 under the age of 40 will have glaucoma, every person is entitled to the same skill, diagnostic competency, and subsequent therapeutic benefits that people over 40 with glaucoma are entitled to.

Thus, the court clearly implied in its decision that it does not really care what the medical community deems to be necessary and proper. Quite interestingly, it referred to language written by the distinguished jurist, Learned Hand, in a 1932 case, *The T. J. Hooper*.[2] Forty-two years earlier, Justice Hand had said, "The courts must in the long run, make the decision. There are some precautions that have been and are so imperative that even their universal disregard will not be accepted as an excuse for their omission."[3] (*The T. J. Hooper* decision required radio sets for ocean going tugs in spite of trade practice to the contrary.) The ramifications of a fascinating decision like *Carey* are truly alarming, particularly to physicians. On the other hand, such decisions are absolute beauty to plaintiffs' attorneys.

Another recent West Coast malpractice case also carried tremendous medicolegal ramifications. In that case, *Gonzales v. Nork*,[4] a California surgeon, Dr. Nork, was sued by a young man named Gonzales. The basis of this case against Dr. Nork was that unnecessary, negligently performed surgery (a fusion and laminectomy) had been conducted on Gonzales' back. As it turned out, in the course of a 22 week trial, Dr. Nork confessed to having operated on this young man unnecessarily, and he also stated that he had operated unnecessarily on about 36 other patients. As a result, the judge fixed damages at 3.7 million dollars — 1.7 million dollars compensatory damages against Dr. Nork and the hospital where he had performed the surgery on Mr. Gonzales, and 2 million dollars in punitive damages against Dr. Nork. Incidentally, nine other cases involving Dr. Nork have been settled out of court, one for $150,000 by the hospital alone.

Other aspects of the *Nork* case are also interesting. Dr. Nork testified in open court that he had been on various drugs such as preludin, donnatal, and barbiturates, but the judge dismissed this as a lot of nonsense and a contrived defense. The fact that the hospital claimed to have followed the regulations and guidelines of the Joint Commission on Accreditation of Hospitals (JCAH) was not an adequate legal defense, the Court said, because following JCAH regulations and guidelines, in and of themselves, obviously did not enable the hospital officials to know that they had a "Dr. Nork" on their staff. Thus, in this case, since the hospital knew, or should have known of the activities of Dr. Nork, it was liable, even though the judge found in fact that the hospital did not know. The implications of this decision for hospital administrators are both obvious and frightening.

The medical and legal professions are

faced with difficult problems that are lying right at the interface of the two professions. The malpractice dilemma, particularly, requires for its solution the expertise and input of people in law, medicine, and associated professional fields, all working together. The major source of expertise and the strongest thrust in defining and resolving the malpractice crisis must come from medicolegal organizations like the American Society of Law and Medicine.

Dayle McAnally

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# ALUMNI NEWS

## General Sneeden Provides an Insight to a Legal Career in The Army

*Dewey Edwards*

*Editor's Note: On September 18, 1975 Brigadier General Emory M. Sneeden was interviewed (via telephone) by Alumni Editor Dewey Edwards. According to the records of the Wake Forest University School of Law, General Sneeden is the first graduate of our law school to be promoted to General of the Army. It was believed by the Jurist staff that in light of current events which have special significance for the armed services, General Sneeden's views on these events would be of interest. As a preface to the general's views on certain topics I have provided a biographical sketch. The Jurist staff thanks General Sneeden for consenting to the interview and extends its congratulations for his achievements.*

Brigadier General Emory M. Sneeden was born in Wilmington, N.C. on May 20, 1927. His home of record is Columbia, South Carolina, although he is presently domiciled in the Washington, D.C. area. He and his wife, Margie Carden Sneeden, have two children, Sharon and David.

General Sneeden received a B.S. degree from Wake Forest College in 1949 and a J.D. degree from the Wake Forest School of Law in 1953. While in law school he was a member of the Phi Delta Phi legal fraternity. His education in law school was interrupted by the Korean Conflict, when he was recalled to serve in the infantry.

Upon graduation from law school General Sneeden, then a first lieutenant, went on active duty wth the Thirty-Fourth Infantry Regiment. He has had numerous military duty assignments in his twenty-four years of active service. He has been in combat service in World War II, the Korean Conflict, and the Viet Nam Conflict. In addition to serving in a legal capacity as a member of the Judge Advocate General's Corps, General Sneeden is also a capable paratrooper. His promotion to brigadier general marks the first time that a paratrooper has been promoted to general officer in the Judge Advocate General's Corps.

General Sneeden was promoted to brigadier general on July 22, 1974. His present duty assignment is as Chief Judge of the United States Army Court of Military Review. This court is the only appellate court in the army. It is composed of twelve appellate judges, in addition to the Chief Judge. These judges sit in three judge panels and review approximately sixty cases per month. Their decisions are subject to discretionary review, except in rare instances, by the United States Court of Military Appeals.

**Q** As you know Congress has allowed the Selective Service System to pass out of existence; (a) what was the attitude of the Army's top personnel to this change?

**A** Well, I think that initially there was some skepticism as to whether it would work. But, as time went on we believe that it has succeeded beyond anybody's wildest dreams so far as the volunteer services go. I suppose the reasons that account for this is that people are allowed to enlist for the job that they want to do. They are allowed to more or less pick their assignments, go where they want to go and go to the unit they want to go to. Also, undoubtedly the recession has helped us on that score. Of course, the Army made a real hard recruiting effort during these years. As you know we are holding on to the draft in case we ever have an occasion to need it. But, there is certainly no need for it in the forseeable future.

**Q** (b) What are your personal feelings about an all-volunteer army?

**A** Well, from what I've seen (I saw it both in

the 18th Airborne Corps and here in Washington) I think you are with people who want to be there, doing a job that they want to do. I've seen attitudes change in the last couple of years. To me it's just been great and I think it will be a success from now on as far as I can see. I think the old story about having a fellow where he wants to be means a lot, and doing what he wants to do. Of course, that's the situation we have now.

**Q** There have been some recent developments in the area of civil rights for women, specifically in mind is the proposed Equal Rights Amendment. Do you foresee any change in the role women have in the Army?

**A** Yes, you can see that almost everyday. Of course, the women now have a Brigadier General heading up the women in the Army. They are going into other branches, other than the Women's Army Corps. We have, as you might know, fifteen or twenty women lawyers on board now and have had since the late sixties. As to the academies, that is on the horizon for their attendance and service in the academies. That gives you a pretty good view, I think, of what's going on there. They're in all branches of the Army now, except the combat arms. For example, now they're in the Military Police Corps, the Advocate General's Corps, our branch, and pretty much spread throughout the Army.

**Q** Mr. F. Lee Bailey stated on a late night interview program that he believed military personnel were good jurors, from the standpoint of returning a non-prejudicial verdict; do you agree?

**A** Yes.

**Q** Why?

**A** Well, we've kept over the years a sort of running talley on it. We have two systems of courts. We have a court that if the accused requests it, he's tried by judge alone. That means that the judge hears the evidence to determine guilt or innocence. Also, if he finds him guilty he sentences him. Over the years comparing, of

course, you look at the findings and that doesn't tell you much because you're considering each case on its own merits. But when you go to the sentencing part of it, we found that the military judge, that is the attorney judge who is trained to do that sort of thing, is a tougher hombre as far as the sentence goes than the military court, that is the jurors, in effect. So, if an accused goes the route of the military court statistics, then our own figures over here tell us that on an average he's got a better opportunity, if he is found guilty, to be sure to come out better with the court members than he would with a military judge. Also, almost always the officers are college graduates; they have usually had a little more experience as a juror than the average fellow has in civilian life. They've sat on these courts normally from the time they are about lieutenants. Not all the time, but from time to time as they go on up the ladder of the Army. Of course, on a close question they are more apt to stay on the mark, I think, than the average juror would be just because of their education and previous experience in the courtroom.

**Q** In the past couple of years there has been some concern by law students about a shrinking civilian job market for law school graduates; has there been an increase in applications for commissions in the Judge Advocate General's Corps?

**A** Yes. During the height of the Viet Nam period, we were getting about ten applications for every one we could take. Then, after Viet Nam calmed down and hostilities ended over there, it dropped off to about the point where we were taking one of every two that applied. Now it's back up to about one in every four that applies to us. I might comment on this, it is much tougher for that one in four to stay on as a career officer than it is for him to get in initially.

**Q** I wonder why that is?

**A** You have got so much competition now to stay. We run our recruiting by year groups. For example, you know from prior experience that you need about sixty men who could have come in in 1970 to stay on with you. Well, we've got over 100 in that group right now who have regular commissions. You can see right off that there are too many. The reason for this is rather obvious. You do not want to have all of your corps locked into three to five year groups and have them all leaving at the same time. You want a steady flow where your experience factor is not lost in one, two, or three years. That gives you a pretty good idea. We've got a lot more people who want to stay than we can keep. That's what it amounts to. It's pretty competitive now.

**Q** What qualifications do you believe to be most important for receiving a commission as an officer in the JAG?

**A** You have got to have a good academic record. Participation in outside activities in college and law school such as holding an office in student government and other activities. A tendency to show leadership traits is important and, of course, the reasons for your application and what your interests are are somewhat important. In addition, your interviews from time to time with the officers that talk with you. We are not looking for the genius, we're looking for the fellow who has a good solid academic background in the upper part of his class who has good common sense, good judgment. This is about the type of fellow we're looking for.

**Q** What advantages do you believe there are in pursuing a legal career in the military, as opposed to pursuing a legal career as a civilian?

**A** I suppose one advantage is that the pay is good. The other advantage, big advantage I see, is that you can do about what you are interested in. For example, if your interest is in criminal law, we can give you a pattern all the way up to where I am in the criminal law area; international law is the same sort of specialization. Of course, graduate work; we have fellows in the corps who have gone up to the SJD degree in specialization. Also, the corps

sends the bright fellows to school to further their education and uses them in that specialty. I suppose those are probably the biggest things. Of course, you still have some fellows around who'd like to travel, to go overseas and see new places and do new things. You can probably tell from my record that I was one of those. Over the years since I was 18, I liked to go to the parachute jumps from time to time. There is just a variety of things to do. It appeals to the fellow who doesn't want to go back home and stay in his hometown for the rest of his life.

**Q** How did you become interested in pursuing a legal career in the Army?

**A** When I came back in I had no idea at that time that I would stay. As you know, I was recalled when the Korean Conflict broke out. During my service with the infantry and the artillery, I enjoyed it. Then I went back and finished law school, took the Bar and passed it. When I went back to Korea, I was pulled into the Judge Advocate's office to work because of the lack of lawyers. That is when I really began to like it and decided I would transfer over. I had always thought, as I guess every guy has this perception, that all you could do in the Judge Advocate General's Corps was try court-martials. But, if you look around at what you can do if you want to, what I've done, you can see a whole different world. You have everything from international law to criminal practice from administrative law to government contract law. It's been a real fine professional career as far as I'm concerned. But, it was sort of by accident, to answer your question, because I got interested and decided to transfer over. The day I was recalled from Korea I had every intention of finishing up my time and coming home.

**Q** What differences have you noticed between individuals who received commissions in the Army twenty-five years ago and individuals who receive commissions today?

**A** Oh, not very much. I have always dealt with people by never trying to fool them or give them a song and dance for an answer. I have always dealt with them

straight from the shoulder. I think that as long as you do that with the younger generation, you will not have any problems. I think that they have more of an inquiring mind as to why you are doing something than they probably did during my generation. But I frankly cannot see much difference. I get along with the young fellows as good as I did when I was at that age some years back. In fact, I've got five of them that call me up here from Fort Bragg. I think it's just a matter of dealing with them straight from the shoulder, face to face, and not separating yourself off so you don't know what's going on with the young people. That's what I have tried to do here.

**Q** Did any particular occurrence or occurrences at Wake Forest have any special significance for you?

**A** Yes, I think so. That is sort of a reminiscent question. I can remember one of your professors kept his promise; he was Dean Lee at that time and is now a professor. He gave us the old Harvard talk and told us to look to our left and our right and one of them would be gone before we finished. And, he was right. I guess we started out with something over 100 in the class and maybe 60 finished. We had Dr. I. Beverly Lake on the faculty who is now an associate justice over on the State Supreme Court. I know you fellows have heard of that wonderful old gentleman, Professor Timberlake. He was the real property professor. Those were the sort of giants you had there on the faculty at the time. Probably, we posed a problem for them because all of us were coming back from World War II and we weren't ready to sit down and study yet. Of course, some of the students there in those classes were Senator Robert Morgan and I guess you know Dr. Norman Williams, the president of Campbell College. He was in that group. Professor Sizemore, is he still with you? He was my neighbor down in the trailer court. You've got another professor who was in our class, Professor Webster. We had some fellows who have sort of kept in touch over the years. Four or five of us came into the Army at that time. I guess I'm the last of them around. The rest have retired. We had some fellows that you shouldn't forget. I will always remember my days there because of the warmth and friendship of those fine people we associated with. We had a reunion with Senator Morgan when he was sworn in up here. Of course, I had known him and worked with him in the attorney general's office when I was in Fort Bragg, but almost every member of the class was up here for the swearing in ceremony. Believe it or not, I recognized most of them.

# CLASS NOTES

### 1957

**Owen Meredith Smaw** has announced his candidacy for the 1976 Democratic nomination for the U.S. Senate from Tennessee. He is presently practicing law as a commerce attorney in Madison, Tennessee.

### 1964

**Signey S. Engles** is now an assistant attorney general, head of the Special Prosecutions Division of the Attorney General's Office in Raleigh, N.C.

**Robert L. Harris** is practicing law with the firm of Harris, Tuck, Freasier and Johnson in Richmond, Va. He and his wife have two children, Bobby and Laura.

**Donald C. Perry** is practicing law with the firm of Smith, Smith and Perry in Monroe, N.C. He is currently the chairman of the Union County Republican Party. His wife is the former Edith Early, a 1964 graduate of Wake Forest University. They have two daughters, ages eight and three.

### 1966

**E. C. (Jene) Thompson, III** and his wife, the former Mary Sue Kennedy, announce the birth of their son, Kennedy Lee, born April 16, 1975. The Thompsons reside in Warsaw, N.C. where Mr. Thompson is engaged in the general practice of law. They also have an older son, Eugene Cabron, IV, age four.

### 1968

**Thomas J. Robinson, Jr.** has recently become a partner in the firm of Block, Meyland and Lloyd in Greensboro, N.C.

### 1969

**Russell G. Walker, Jr.** is presently serving as secretary and general counsel for Food Line Super Markets, Inc. This corporation has a thirteen store chain of food stores with headquarters in Asheboro, N.C.

**Gerald W. Hayes, Jr.** is practicing law with D. K. Stewart, a Wake Forest graduate of 1950. He and his wife, Linda, have three daughters, Heather, Allison and Parrish. They reside in Dunn, N.C.

### 1970

**Harry Clendenin** who was formerly associated with the firm of Smith, Moore, Smith, Schell and Hunter, is now a partner in the firm of McNairy, Clifford and Clendenin in Greensboro, N.C.

**Chester G. Schultz** and his wife, the former Sally Jackson, announce the birth of their first child, a daughter, Joselyn Kathryn, born April 16, 1975 in Gettysburg, Pennsylvania.

### 1972

**John P. Simpson** has recently become a partner in the firm of Bennett, McConkey and Simpson, P.A. He has also been appointed by Governor Holshouser to the N.C. Water Safety Committee, an advisory committee to the N.C. Wildlife Resources Commission. He resides in Morehead City, N.C.

**Stephen Surles** is a partner in the firm of Weeks, Muse and Surles, in Tarboro, N.C. The spring, 1975 issue of the *Jurist* erroneously reported the firm's location to be Dunn, N.C.

**Carroll C. Wall, III** is an assistant district attorney for the Twenty-Second Judicial District in North Carolina. He and his wife announce the birth of their second child, Carroll Charles, IV, born March 20, 1975. They reside in Lexington, N.C. and have one other child, Jane Elizabeth.

### 1973

**Robert H. Swennes, II** is currently an assistant counsel in the Navy Office of General Counsel and is completing work on an L.L.M. in Taxation at Georgetown University Law Center. He and his wife announce the birth of their second child, a daughter, born April 17, 1975.

**W. Riley Hollingsworth, Jr.,** former president of the Student Bar Association, is now a trial attorney for the Federal Communications Commission in Washington, D.C.

### 1974

**W. Richard Moore** is associated with the firm of Mast, Tew and Nall, P.A. in Smithfield, N.C. He is in charge of the operation of a branch office in Selma, N.C.

**George Bauer** has made a recent change of address to 31621-B N. Marginal, Willowick, Ohio.

### 1975

*Following is a list of the business addresses for approximately one-half of the 1975 graduates. Only those persons for whom we had complete business addresses have been included. The spring issue of the* **Jurist** *will provide the business addresses for the remainder of the 1975 class.*

**Kenneth J. Anderson**
Fayetteville Technical Institute
Fayetteville, NC

**John H. Anderson, II**
Cumberland Co.
District Attorney's Office
Fayetteville, NC

**Albert R. Bell**
Maupin, Taylor & Ellis
Raleigh, NC

**Robert A. Benson**
Booth, Fish, Adams, Simpson & Harrison
Greensboro, NC

**William H. Boone**
N.C. Revenue Dept.
Raleigh, NC

**David H. Bowden**
Booke & Co.
Winston-Salem, NC

**Stephen J. Braun**
Briscoe, Kenney & Kaminetz
Lexington Park, Md.

**Ernest L. Brown**
Vernon, Vernon & Wooten
Burlington, NC

**Vessie J. Burkins**
District Attorney's Office
Winston-Salem, NC

**William S. Cherry, Jr.**
Spruill, Trotter & Lane
Rocky Mount, NC

**Michael R. Cline**
Commissioner, W. Va. Dept. of Labor
Charleston, W. Va.

**Thomas W. Cole**
Gardiner, Sixby, Bradford & Carlton
Arlington, Va.

**Bruce H. Connors**
Clerk, N.C. Supreme Ct.
Raleigh, NC

**Christopher C. Covey**
Peat, Marwick, Mitchell
Greensboro, NC

**Ronald M. Cowan**
Pittman, Pittman & Pittman
Rockingham, NC

**James D. Cox**
I.R.S.
Washington, D.C.

**Jack L. Cozart**
N.C. Justice Dept.
Raleigh, NC

**Charles L. Cromer**
Davidson Co. Community College
Lexington, NC

**Christopher S. Crosby**
Hon. D. M. Britt
N.C. Court of Appeals
Raleigh, NC

**Thomas T. Crumpler**
Glenn & Crumpler
Winston-Salem, NC

**Robert L. Cummings**
Ted Lockerman, Esq.
Clinton, NC

**Anthony S. Disanti**
C. Banks Finger
Boone, NC

**Samuel C. Evans**
Kyle Hayes
N. Wilkesboro, NC

**David C. Francisco**
Rodman, Rodman & Holscher
Washington, NC

**Ann S. Fulton**
ABC Board
Raleigh, NC

**Edwin L. Gavin**
N.C. Dept. of Natural &
Economic Resources
Raleigh, NC

**Vernon F. Glenn**
Glenn & Crumpler
Winston-Salem, NC

**Melvin D. Goines**
McCartha & Bryant
Charlotte, NC

**David W. Greenfield**
G. C. Murphy Co.
McKeesport, Pa.

**Michael R. Greeson**
W. G. Pfefferkorn, Esq.
Winston-Salem, NC

**Charles H. Henry**
Police Attorney, Onslow Co.
Jacksonville, NC

**Gregory L. Hinshaw**
NCNB
Raleigh, NC

**Claude B. Holden**
Carpenter, Golding, Crews &
Meekins
Charlotte, NC

**Dorsey D. Hostler**
U.S. Army
Charlottesville, Va.

**Morris W. Keeter**
Vannoy, Moore & Colvard
N. Wilkesboro, NC

**Richard M. Lewis**
Maupin, Taylor & Ellis
Raleigh, NC

**Anne B. Lupton**
Public Defender's Office
Greensboro, NC

**Paul E. Marth**
Judge Advocate General Corps
U.S. Army

**William E. Martin**
Clerk, Judge Ward
Winston-Salem, NC

**Margaret E. McDermott**
Ramsey, Hill, Smart & Ramsey
Brevard, NC

**Donald J. McFayden**
Clerk, N.C. Supreme Ct.
Raleigh, NC

**Robert E. Morey**
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Van Camp & Robbins
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W. G. Pfefferkorn
Winston-Salem, NC

**Anne M. Page**
NC Court of Appeals
Judge Robert Martin
Raleigh, NC

**James W. Page**
Daniel L. Taylor, Esq.
Winston-Salem, NC

**William D. Parsons**
District Attorney
Clinton, NC

**Phyllis S. Penry**
Grubb & Penry
Lexington, NC

**Mary E. Pipines**
District Attorney
Fifth Judicial District
Burgaw, NC

**Robert N. Richardson**
City Attorney
Rural Hall, NC

**James K. Roberson**
Long, Ridge & Long
Burlington, NC

**William L. Senter**
McLeod & Burgardt, P.A.
Fayetteville, NC

**Randolph E. Shelton**
Shelton & Evans
Southern Pines, NC

**Paul A. Sinal**
Legal Aid Society
Winston-Salem, NC

**Richard D. Sparkman**
Judge Rufus Reynolds,
Bankruptcy Judge
Middle District of N.C.
Greensboro, NC

**Paul A. Stephens, Jr.**
Robert Kane,
Atty. Gen. of Pa.
Harrisburg, Pa.

**Frank A. Viteritto**
Judicial Clerkship
Trenton, N.J.

**James K. Waldroup**
T. M. Kinkens
Robbinsville, NC

**James G. Wallace**
Perry, Patrick, Farmer &
Michaux
Charlotte, NC

**James P. Weaver**
F.B.I.
Washington, D.C.

**Stanley W. West**
Pittman, Staton & Betts
Sanford, NC

**William E. Wheeler**
Bencini, Wyatt, Early &
Harris
High Point, NC

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Are You Engaged In A General Practice of Law? _____

List All Public Office, Professional, and Civic Honors and Activities, With Dates:

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Please Give Brief Account Of Personal Items Of Current Interest: (Recently Married, Birth Of A Child, Current Professional Positions, Professional Plans In The Immediate Future, etc.) _____

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